

**Town of Fitzwilliam
Zoning Board of Adjustment
Meeting Minutes
February 14, 2019**

Members Present: Steve Filipi, Chairman; Gretchen Wittenborg, Vice Chairman; Members: Bob Handy; Chad Beede; Dan Sutton, Cathy Davis; Alternates: Carman Yon, Sue Wood and Dan Sutton; Selectmen's Representative, Dan Baker; and Laurie Hayward, Land Use Administrative Assistant (LUAA).

Members Absent: Cathy Davis and Carmen Yon, Alternate.

Other's Present: Paul Grasewicz, Applicant for Spicer; & Jon Le Claire; Mike & Barbara Thompson; Benny & Darlene Warnke; Thomas Rothermel; Peter & Roberta LeTourneau, Warnke abutters.

Call to Order: The Chair called the meeting to order at 7:03 PM

Public Hearing:

The Chair opened the first public hearing, reading the notice:

7:15 PM. Public Hearing. ZBA Case # 19-01, David & Phyllis Spicer application for Special Exception to allow a 30' x 23'11" expansion of the dwelling at 12 Spicer Point, on Laurel Lake, in the Wetlands Protection Overlay District, Tax Map 21, Lot 19.1, in the Rural District, reference Zoning Ordinance 127-19. f. to allow a 4-foot setback where a 20-foot setback is required.

The Chair asked Paul Grasewicz if he was here to present the appeal. Grasewicz stepped forward and showed maps to the Members that showed the two houses on the lot, 10 Spicer Point and 12 Spicer Point on the same lot. It showed for 12 Spicer Point, the existing house and proposed addition which extends the house back from the lake by 30 feet. Grasewicz noted that they do need to go to DES for septic and the Planning Board for WPOD (Wetlands Protection Overlay District) approval. Grasewicz stated that they are applying to the Zoning Board of Adjustment for Special Exception for setbacks.

Wells, Flood Plain, Impermeable Surface. Handy asked about the well and was told the well is shared. Regarding the neighboring property well, Grasewicz stated that because the Spicer leach field is closer than 75 feet to the Drugg property, Jeanne Drugg signed a Protective Radius Waiver. There was a question about the house being in the flood plain. Grasewicz said it is not in a flood plain. He stated that a FEMA LOMA (Letter of Map Amendment) was issued for this property. Wittenborg asked Grasewicz to further explain. He said that they applied to have this property removed from the flood plain and FEMA agreed to do so. Grasewicz also stated that the lot already has more than 20% impervious surface on it.

Septic System. Handy asked where the septic system for the house with the proposed addition will be. Grasewicz told members that there will be a high-performance septic system which is located at a high spot on the lot, is raised about four feet, and that they will just need to add a couple of pipes to the current system. Yon asked about the septic system and the number of bedrooms. Grasewicz made it clear that the septic system in place was designed just for 10 Spicer Point which is 2 bedrooms and with no

consideration of 12 Spicer Point. The LUA pointed out that the town tax map shows 12 Spicer Point as having 3 bedrooms.

House Plans, Number of Bedrooms, Change in Square Footage. Le Claire showed the elevations for the new house. Handy asked about a cellar. Le Claire stated that there is no cellar. The original portion will remain on piers and the new addition will be on a slab. It was noted that the original square footage per the town tax card is 995 sq. ft. Wittenborg asked what new square footage would be. The response given is that the proposed changed structure would be roughly estimated at 2,000 sq. ft. Wittenborg stated that the house square-footage is being roughly doubled and Le Claire agreed. Le Claire also told Members that there are minimal changes to the already standing structure at 12 Spicer Point and that the addition will be two stories. Asked about the current roof, Le Claire stated that the current roof will have to come off and the structural design of the roof will change. Davis asked about the configuration of bedrooms because the plans seemed to show four bedrooms, two on each floor. Le Claire stated that one original first floor bedroom will become an office.

Is there a change of Use from Seasonal to Year-Round? Wittenborg asked whether the dwelling will be used seasonally or year-round. Grasewicz said he is not sure but that must be determined for the DES Sub-Surface septic application. Wittenborg asked about central heat. Le Claire explained there is electric heat currently; but that will change and there will be both heat and air conditioning when the addition is built. There was a brief discussion about the conditions and requirements to change from seasonal to year-round. Wittenborg asked if the dwelling qualifies for year-round. Grasewicz stated that he has not done the analysis yet – so he doesn't know if it qualifies.

DES Application; Non-conforming Uses; Grandfathered Uses; and Applicable Ordinances. Handy asked if they had applied to DES. Grasewicz said not yet. Grasewicz stated that he is not doing anything additional to the shoreline but they may be required by DES to do some additional plantings. The Chair explained that this property has 2 dwellings on one lot. That makes it a Non-conforming use of the property. The Chair went on to point out a fairly recent change to town zoning that allows accessory dwellings and buildings. He read a portion of the Zoning Ordinances, Section 127.9.B (2), which defines "Accessory Dwelling Units". Grasewicz knew the reference and pointed out that there are several requirements, including that an accessory structure be less than 800 square feet and be a secondary use; so, this would not be useful in his appeal. Wittenborg explained that the application came to the Zoning Board of Adjustment (ZBA) just looking at the expansion as something that could be done under Special Exception. Wittenborg pointed out that this property is non-conforming in multiple ways. Grasewicz pointed out that the property and its two dwellings is "grandfathered". Wittenborg agreed that they are "grandfathered", but disagreed that meant they did not have to apply to the ZBA. The Chair rephrased the question as: what is the legal basis for adding on to a non-conforming use, in this case the non-conforming use starts with two dwellings on one lot. There was a conversation about whether the appeal should be for a Variance rather than a Special Exception. Wittenborg read from a ZBA handbook, "...absent a specific provision in the Ordinance allowing expansions of non-conforming uses by Special Exception a landowner cannot use a non-conforming use as the basis for a Special Exception. A Variance would be required to allow its expansion." Grasewicz said he does not think they are expanding a non-conforming use, the use is residential in a residential zone, the two separate structures are grandfathered, and they just want to make this one bigger. Wittenborg spoke about the Article that the New Hampshire Municipal Association published regarding the New Hampshire legal basis for handling non-conforming properties and uses in zoning appeals. Wittenborg asked the Land Use Associate to send a "digital file" to members.

Site Walk and Continuance of the Public Hearing votes. The Chair asked if members wanted to do a Site-walk. Handy indicated that he wanted to do a Site Walk. Davis also was in favor. Members agreed that a Site Walk would be useful. Grasewicz to have an answer to the question whether the house will change from seasonal to year-round use. He stated that he must have that for the DES application and will have that information for the Board at the next meeting.

Thomas Rothermel asked if just making a seasonal house a year-round house would not be a change of use. Wittenborg stated that is her question as well. The Chair pointed out that the state has qualifying standards that must be met before there can be a change from seasonal to year-round. The Chair also noted that there are other issues of concern to the state, for example the amount of impermeable surface. Rothermel asked whether the ZBA could approve of changing the dwelling from seasonal to year-round conditional based on meeting qualifications. The Chair explained that this Board, the ZBA, cannot approve or disapprove of the seasonal or year-round status of a dwelling as that is the purview of the state. Grasewicz explained that he will try to be able to tell whether they are applying for seasonal or year-round by the next meeting.

Questions regarding the two houses on a single lot. It was noted that there were two houses on a single lot, 10 Spicer and 12 Spicer and that 10 Spicer had recently been rebuilt and in the process enlarged. Wittenborg asked why the proposal for the dwelling at 10 Spicer did not come before the ZBA for a Variance. Grasewicz stated that the proposed dwelling was in the same footprint and so they did not believe that it required ZBA approval. Wittenborg noted that it was not in the same footprint. Grasewicz said that it was moved to be inside the setback and so they went to the Select Board and the Select Board approved it. Wittenborg pointed out that they were obliged to come before the ZBA if they were not planning to stay within the footprint. Grasewicz stated that he thought they had more nearly met the setbacks and so didn't need ZBA approval. Grasewicz added that the Select Board did not seem to have a problem.

Rothermel asked whether the Conservation Commission is involved. The LUA explained that the Conservation Commission was informed and took up the proposed expansion at the meeting the previous night and they do plan to give their input to the process.

Asked about his timing, Grasewicz told Members that he is seeking their approval first and then he will apply to DES and after that he will work on the septic design.

There was a discussion about dates and times including that the next second Tuesday of the month is March 12th and that is the date of annual Town vote and Town Meeting. **The Chair made a motion that there be a Site Walk on Monday Feb 18, 2019 at 4 PM and the Public Hearing will have a Continuance Hearing to be held on Thursday, Mar 7, 2019 at 7 PM; Wittenborg seconded and it was voted unanimously.**

Grasewicz and Le Claire left the meeting at this point.

The Chair opened the second public hearing, reading the notice:

7:30 PM. or thereafter, Public Hearing, ZBA Case # 19-02, Benny Warnke application for a Special Exception to allow a hammerhead lot, off Fullam Hill Road, Tax Map 12, Lot 39, in the Rural District, reference Zoning Ordinance 127-19. D.1.

Current lot configuration, Frontage, and whether this qualifies for a Hammerhead lot. Benny Warnke stepped forward and showed a plan of the property. Warnke explained that he currently has a plan for three lots and the three lots are written into the deed. Warnke pointed out the location of his house on one of the proposed lots. The Chair asked about frontage and was told that there was a total of roughly 680 feet of frontage which would meet the requirement of 300 feet of frontage for two lots and 50 feet of frontage to allow access to a hammerhead lot.

Efforts to prove prior subdivision and gain access to a third “land-locked lot”. Warnke told members that his first thought was to simply do a deeded right-of-way to access the back lot; but he was told he couldn’t do that. The Chair confirmed that would not be allowed. The Chair asked Wittenborg if she had seen the deed or original plan. Wittenborg stated that the original subdivision plan is apparently not on record which in the eyes of the law means it doesn’t exist. Wittenborg pointed out that there is a question of involuntary merger. However, this may not apply as there is nothing that shows that the lot in question was ever anything other than a single lot – so perhaps, there never was a merger.

Boundary Plan verses Subdivision Plan. Warnke showed Wittenborg the Boundary Plan. Wittenborg did agree that it was recorded at the County Registry of Deeds. Wittenborg asked the LUA what she knew about this. The LUA said that when Warnke first came to her office, she referred Warnke to the Planning Board first, thinking this might be simply something involving a request for a Boundary Adjustment. She had Warnke go to the Planning Board for a Preliminary Consultation. At that meeting it was pointed out that the plan provided was a Boundary Plan, not a Subdivision and that there was an active Planning Board and a Zoning Ordinance in place when the Boundary Plan was recorded in 1976. The LUA recommended that Warnke do research at the Registry and told him that he was looking for a subdivision plan. The LUA said that she had checked some neighboring property files to see if there were mergers done in the area and she found deeds describing a 1968 subdivision, which pre-Fitzwilliam zoning, called “New Hampshire Acres- Firmin Lot Subdivision”. Wittenborg asked Pete LeTourneau and he said the he had heard about New Hampshire Acres Firmin Lot but he had not seen a plan.

It was both noted that the tax map shows only one lot, not three and pointed out that the tax maps do not provide evidence of anything at this point. Warnke showed Members a few different maps some with dates and some not. There were questions about the amount of research Warnke has done. He stated he had been to the Registry at least 10 times. Wittenborg pointed out that they have to have a registry certified plan and that Warnke has not provided a certified plan or subdivision.

Planning Board must be involved in subdivision. Warnke stated that, at a Preliminary Consultation, the Planning Board suggested that he go to the ZBA before they take up his request and they suggested the hammerhead. He also said that he left the meeting thinking that was all and was later contacted by the LUA with a request that he provide a copy of the original Subdivision Plan as they couldn’t use the Boundary Plan. There was a brief discussion about the need to have a formal survey in order to apply to the Planning Board even if the Zoning Board approves the use of a hammerhead lot and he would have to meet all of the other subdivision criteria.

Mr. and Mrs. LeTourneau spoke about their question about the tax status. There was also a question about how a land locked lot could be built on when they are not allowed in Fitzwilliam. There was also a concern that the ZBA was discussing giving a subdivision approval. The Chair made it clear that they were simply reviewing whether a hammerhead lot would be OK. To decide that they need to know whether there was a valid three-lot subdivision of the property.

The Chair again stated that if the ZBA does give relief on the specific use of a hammerhead lot; however that does not provide approval of the plan shown. Getting a plan accepted will require an investment in re-drawing the subdivision and approval through the Planning Board and pointed out that there may be challenges in terms of dimensional requirements. The Chair suggested to Warnke that he do the math on the lots, especially the back lot as he may not meet the requirements- he just may not have enough land.

The Chair made a motion to Continue the Warnke Public Hearing to March 7th at 7:00 PM with and the expectation that a registry of deeds certified copy of the plan would be provided. Wittenborg seconded the motion and it was approved unanimously.

Warnke and interested parties left at this point.

Minutes: Minutes from September 11, September 20, and Site Walk September 27, 2018, and October 9, 2018. Dan Sutton noted that he did attend the Site Walk and it was agreed those Minutes should be amended to show that. **The Chair moved that the Minutes of September 27 be approved as amended and the Minutes of September 11, September 20 and October 9 are approved as written; Wittenborg seconded the motion and it was voted.**

There was a brief discussion about whether they should seek legal advice regarding expanding a non-conforming use and grandfathering and it was agreed that they would have the LUA check with New Hampshire Municipal Legal for advice.

There being no further business, it was moved and seconded, and it was voted unanimously that the meeting be adjourned at 8:38 PM. There will be a Site Walk on February 18th and the next Meeting will include Continuance Hearings and be held on Thursday, March 7, 2019

Respectfully Submitted,

Laurie Hayward
Land Use Administrative Assistant